STATE OF MICHIGAN

COURT OF APPEALS

ELLEN CORSI, as Next Friend of JOHN CORSI,

Plaintiff-Appellant,

V

LUTHERAN HIGH SCHOOL ASSOCIATION OF GREATER DETROIT, d/b/a LUTHERAN HIGH SCHOOL NORTH,

Defendant-Appellee.

UNPUBLISHED
November 15, 2002

No. 233051
Macomb Circuit Court
LC No. 99-002893-CK

Before: Talbot, P.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition of her breach of contract claim. We affirm.

Plaintiff's son, John Corsi, began attending defendant Lutheran High School North in the fall of 1996. In early 1999, plaintiff removed her son from the school and placed him into a public high school to complete his education. Plaintiff brought this action alleging that defendant breached its contract with her to accommodate John's special needs associated with his learning disabilities. She alleged that defendant's representatives orally promised her that defendant would undertake particular responsibilities and that defendant employed teachers who were qualified to attend to John's special needs. Plaintiff claimed that defendant failed to do so. Plaintiff sought compensation for tuition and fees she paid to defendant, as well as for her son's loss of future economic opportunity due to his "lack of an appropriate high school education."[1]

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10). Defendant attached to its motion a copy of an Individualized Educational Planning Committee Report and an Individualized Educational Plan, both dated February 5, 1997. The Individualized Educational Plan for plaintiff's son outlined the student's responsibilities and the services to be provided by defendant. The plan also stated:

[1] Plaintiff also asserted a claim based on fraud/misrepresentation. On appeal, plaintiff does not challenge the dismissal of that claim.

> After considering least restrictive environment issues and the student's individual needs, we agree these programs/services should be implemented.
>
> * * *
>
> I understand that the Tutorial Supportive Educational Services Program is not a resource room program. The program is designed to assist students in the successful completion of the curriculum offered at the Lutheran High School the student is attending.

The plan was signed by plaintiff, her son, and defendant's representatives Shari Hohnstadt and John Baginski. In opposition to defendant's motion, plaintiff submitted her affidavit which essentially reiterated the allegations in her complaint regarding oral promises made by defendant's representatives on May 13, 1996 about other accommodations that defendant would make for plaintiff's son.

The trial court granted summary disposition of the breach of contract claim on the ground that the parol evidence rule precludes consideration of prior oral promises that contradict the terms of a written agreement. Plaintiff filed a motion for reconsideration, which the trial court denied.

We review a trial court's determination of a motion for summary disposition de novo. *Peters v Dep't of Corrections*, 215 Mich App 485, 486; 546 NW2d 668 (1996). In reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), this Court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in a light most favorable to the nonmoving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). This Court may grant a motion for summary disposition pursuant to MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue with respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

Plaintiff argues that the trial court erred in determining that the parties intended the written agreement to be a complete expression of their agreement and in applying the parol evidence rule. We disagree.

The parol evidence rule can be summarized as follows: "parol evidence of . . . prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to vary the terms of a contract which is clear and unambiguous." *Schmude Oil Co v Omar Operating Co*, 184 Mich App 574, 580; 458 NW2d 659 (1990). The rule recognizes that with nearly every written agreement there is a parol agreement merged within. *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 492; 579 NW2d 411 (1998). The parol evidence rule addresses the fact that disappointed parties will have great incentive to describe circumstances in a way that would be different from the explicit terms of the contract. *Id.*. However, parol evidence of prior or contemporaneous agreements or negotiations is admissible on the threshold question whether a written contract is an integrated instrument that is a complete expression of the parties' agreement. *NAG Enterprises v All State*, 407 Mich 407, 410; 285 NW2d 770 (1979).

As an initial matter, we reject plaintiff's argument that the trial court's application of the parol evidence rule was sua sponte because neither party briefed this issue. Defendant clearly relied on the Individualized Educational Plan signed by plaintiff in support of summary disposition, and defendant argued in its reply brief below that plaintiff may not rely on an alleged oral contract to contradict unambiguous terms of a written contract signed by her.

We conclude that the trial court properly granted summary disposition. The oral promises by Baginski and Hohnstadt upon which plaintiff bases her breach of contract claim were made on May 13, 1996. It is undisputed that the parties signed the Individualized Educational Plan on February 5, 1997. Thus, the alleged oral representations were made prior to the written agreement. Parol evidence is admissible to establish the full agreement of the parties where the document purporting to express their intent is incomplete. *In re Skotzke Estate*, 216 Mich App 247, 548 NW2d 695 (1996).

The individualized education plan for John Corsi is detailed and complete in its terms. Notably, some of the alleged oral promises are contained therein. *UAW-GM*, *supra* at 492. Plaintiff alleged Hohnstadt and Baginski promised that she could periodically contact Baginski to track John's academic progress. The Individualized Educational Planning Report provided that a parent was responsible for communication with the school and the consultant. This portion of the alleged oral agreement appears to be merged into the written agreement. Also, the plan provided a detailed tutorial program for John. It provided the student would keep the assignment log, and the prior oral agreement alleged by plaintiff provided that Baginski would keep the assignment log for John. Plaintiff alleged that Baginski promised to oversee John's education so he "would succeed" in all of his classes, which contradicts the written plan providing that the program was designed to "assist" in the successful completion of his classes. Thus, the alleged oral agreement contradicts the plain and unambiguous terms of the written agreement. The written agreement is not incomplete concerning the services to be provided and the responsibilities of the parties.

Plaintiff offered no evidence that the parties did not intend the written instrument to be a complete expression of their agreement as to the matters covered. *NAG Enterprises*, *supra* at 410. Plaintiff did not challenge the legitimacy of the written agreement on any basis. The record shows that plaintiff did not even reference or respond to defendant's reliance upon the written agreement, much less offer any evidence to create an issue of fact regarding whether the written agreement was intended to be a complete embodiment of the agreement. Moreover, in her motion for reconsideration of the trial court's grant of summary disposition, plaintiff did not offer any evidence to dispute the validity or the completeness of the written agreement. For these reasons, the trial court did not err in applying the parol evidence rule and determining that plaintiff failed to demonstrate a genuine issue of material fact on her breach of contract claim. Summary disposition was proper because plaintiff's claim was based on the allegations of promises made by Baginski and Hohnstadt, and thus, with this evidence inadmissible, plaintiff fails to raise a genuine issue of material fact for the jury.

Affirmed.

/s/ Michael J. Talbot
/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald